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July 7, 1992

ORIGINAL
FILE

Ms. Donna Searcy
Secretary
Federal Communications Commission
Stop Code 1170
Washington, D.C. 20554

Re: CC Docket No. 92-77 Billed Party Preference for 0+ InterLATA Calls

Dear Ms. Searcy:

Transmitted herewith for filing on behalf of PhoneTel Technologies, Inc. are an original and five copies of its initial comments on the Commission's proposal to implement a system of billed party preference. These comments were solicited by the Commission's Notice of Proposed Rulemaking in this proceeding, FCC 92-169, released May 8, 1992.

If there are any questions, please communicate directly with the undersigned.

Sincerely,

Mitchell F. Brecher
Counsel for
PhoneTel Technologies, Inc.

Enclosure

No. of Copies rec'd 0+5
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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 7 - 1992

In the Matter of Billed Party Preference for 0+ InterLATA Calls	)	CC Docket No. 92-77

COMMENTS OF PHONETEL TECHNOLOGIES, INC.
ON BILLED PARTY PREFERENCE

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Attorneys for PhoneTel Technologies, Inc.

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In the Matter of Billed Party Preference for 0+ InterLATA Calls	)	CC Docket No. 92-77

COMMENTS OF PHONETEL TECHNOLOGIES, INC.
ON BILLED PARTY PREFERENCE

PhoneTel Technologies, Inc. ("PhoneTel"), by its attorneys, hereby submits its comments on the Commission's proposal to implement a system of billed party preference and states as follows:

INTRODUCTION

PhoneTel is an interexchange carrier headquartered at Cleveland, Ohio. Its service offerings include operator-assisted calling services from many telephones available to the public. These locations include shopping malls, hotels, healthcare and educational institutions. PhoneTel's interstate operator-assisted services (sometimes called "0+" services) are offered in conformance with the provisions of the Telephone Operator Consumer Services Improvement Act of 1990[1/] and with the Commission's operator service rules. As a provider of 0+ services, its interests may be profoundly affected by the billed

1/ That act is codified at Section 226 of the Communications Act of 1934, as amended, 47 U.S.C. §226 (1991).

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SUMMARY

PhoneTel Technologies, Inc., a provider of interexchange services, including operator services, opposes the Commission's proposal to implement a system of billed party preference to govern the routing of operator-assisted or 0+ calls. Notwithstanding the Commission's "tentative conclusion" that a billed party preference system might be "user friendly" and that it would focus competition on end users rather than aggregators, there are numerous and significant reasons why billed party preference would disserve the public interest and should not be implemented for 0+ calls from <u>any</u> telephones.

First, billed party preference will be extremely costly. Its implementation will cost in the hundreds of millions of dollars nationwide. Those costs ultimately will be recovered from consumers of 0+ services and they will significantly increase the rates for all carriers' 0+ services, including the rates of the dominant carrier. In addition, billed party preference will cause thousands of aggregators to have incurred wasteful, unnecessary telephone equipment modification and replacement costs to accommodate 10XXX access -- whose purpose would be obviated in a billed party preference environment.

Further, the implicit premise underlying the Commission's proposal that most consumers will select their presubscribed 1+ carrier as their preferred 0+ carrier is unsupported and unsupportable. The Commission's alternative suggestion that consumers be able to select different carriers

for their 1+ and 0+ calling is unrealistic. Such a system would require dual presubscription (dual PIC). Dual PIC proposals have been rejected on several previous occasions as being unduly expensive and impractical.

In a billed party preference system, billing information would have to be sent to at least two operator systems. However this information is transmitted, the additional communication of that information would delay call completion, frustrate consumers and increase the opportunity for telephone toll fraud.

In addition to being costly and inconvenient, billed party preference is unnecessary. Virtually all of the concerns which led to the original billed party preference proposals in the late 1980's -- lack of identification of the carrier, inability to reach a caller's preferred carrier, and high rates -- have been addressed and largely resolved through enactment of TOCSIA, promulgation of Commission regulations, and marketplace responses by providers of 0+ services.

Even if the Commission attempts to implement billed party preference, it must realize that such a system will not be ubiquitous. It will not be available where the local exchange carrier does not provide equal access nor will it be available with such important telephone billing instruments as commercial credit cards and foreign carrier calling cards and billed telephone numbers. To the extent that it solves any problems not otherwise solvable, it will be no more than a partial, sporadic solution.

Finally, billed party preference will impede development of competition and limit consumer choice and service availability both in the interexchange telecommunications marketplace and the pay telephone marketplace. In a billed party preference environment, operator services will be reduced to being an adjunct of the 1+ services market. That market will remain dominated by one carrier with limited competition from two far smaller carriers with the resources to attempt to compete in the national marketplace. There will be little, if any, opportunity for smaller regional or specialized service "niche" carriers to compete effectively in that market.

For all of the foregoing reasons, the Commission should not adopt a system of billed party preference.

party preference proposal set forth in the Commission's Notice of Proposed Rulemaking in this proceeding.[2/]

As described by the Commission, billed party preference is a routing methodology for 0+ interLATA traffic whereby interLATA 0+ calls would be routed by the originating local exchange carrier ("LEC") to the operator service provider ("OSP") preselected by the party that is to be billed for the call. This methodology, which the Commission "tentatively concludes" is in the public interest, would replace the current system of premises-owner presubscription implemented pursuant to a 1988 order of the United States District Court supervising the Modification of Final Judgment ("MFJ") in United States v. Western Electric Co., Inc.[3/]

While the Commission's billed party preference proposal may have some superficial appeal, PhoneTel believes that, upon careful analysis of all of the relevant considerations surrounding that proposal, the Commission should reject the notion of billed party preference as an expensive, unduly complicated system which will create numerous problems while solving none that have not already been addressed by other legislative and regulatory initiatives.

Before addressing the merits of billed party preference, PhoneTel offers some preliminary observations in

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2/ Billed Party Preference for 0+ InterLATA Calls (Notice of Proposed Rulemaking), FCC 92-169, released May 8, 1992 (hereinafter, "Notice" or "NPRM").

3/ 698 F. Supp. 348 (D.D.C. 1988).

order to place the current debate surrounding billed party preference in perspective. Not surprisingly, the leading proponents of billed party preference have been the LECs, primarily the Bell Operating Companies ("BOCs"), led by Bell Atlantic.[4/] The BOCs' motivation for embracing billed party preference is transparent and self-serving. Their concern is not that OSP selection decisions should be made by the party paying for the call rather than the owner of the premises where the originating telephone is located. The BOCs primarily fear that imposition of a billed party preference scheme upon them by the MFJ court might cause premises owners to remove BOC public telephones -- subject to billed party preference -- from their properties, and to replace those phones with private pay phones -- not subject to billed party preference -- in order to be able to continue to earn commission payments from the OSP serving the phone on a presubscribed basis. In other words, the BOCs are advocating that the Commission order billed party preference for all calls -- or at least all calls from public telephones -- in order to protect their pay telephone operations from becoming competitively disadvantaged relative to the payphone operations of those entities not subject to the MFJ's equal access requirements, e.g., private pay phone owners.

While PhoneTel can understand the BOCs' desire to protect their public telephone business from erosion, it does not

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4/ See, e.g., Bell Atlantic Petition for Rulemaking to Establish a Uniform Dialing Plan from Pay Telephones, RM-6723, filed April 13, 1989.

believe that protection of the BOCs' position in the pay telephone market should drive the Commission's analysis of the public interest factors surrounding billed party preference. As will be discussed more fully in these comments, there exist far more weighty public interest considerations which militate strongly against billed party preference.

Further, it is curious that the BOCs' endorsement of billed party preference and, indeed, the Commission's proposal itself, is limited to 0+ interLATA calling. If, as the Commission suggests in the Notice, the focus of OSP competition should be directed toward the end user and away from the recipient of 0+ commissions[5], then one must wonder why that focus should not apply similarly to intraLATA as well as interLATA operator services. Premises owners earn commissions on intraLATA operator services revenues as well as interLATA revenues. In the cases of BOC public phones, the BOCs' "agents," i.e., the pay phone premises owners, receive commissions from the BOCs on intraLATA revenues. PhoneTel knows of no reason why end users are any less entitled to determine the carrier for intraLATA 0+ calls than they are for interLATA 0+ calls. Stated simply, operator services competition -- whether it is to be directed toward end users or to aggregators -- does not end at the LATA boundary.

5/ Notice, supra, at ¶ 13.

II. THE COSTS OF BILLED PARTY PREFERENCE WILL BE SIGNIFICANT AND WILL FAR EXCEED ANY RESULTING PUBLIC INTEREST BENEFITS

In tentatively concluding that billed party preference would serve the public interest, the Commission notes the existence of several perceived advantages of such a system. Among these noted advantages are that the system would be "user friendly", that it would focus competition on end users and away from aggregators, that it would increase competitiveness in the OSP marketplace, and that it would comport with the MFJ court's views on the equal access requirements of the decree. These so-called advantages are misleading and overstated and are more than offset by the cost and other disadvantages associated with the billed party preference proposal.

The public interest "negatives" of a billed party preference proposal are numerous. The paramount disadvantage of billed party preference is the cost of its implementation. To date, no reliable data regarding billed party preference implementation costs have been submitted. However, even based upon the rough and unsubstantiated estimates heretofore provided (mostly by proponents of such a system), it is apparent that those costs will be enormous -- in the hundreds of millions of dollars, at least.[6/]

6/ For example, Pacific Bell projects implementation costs in excess of $200 in its operating territory alone. AT&T estimates that the costs will exceed one-half billion dollars. Notice, supra, at ¶ 25.

These hundreds of millions of dollars of additional costs to be borne by the BOCs and other LECs will be passed on to OSPs and ultimately to end users. The inevitable consequence of billed party preference implementation will be higher costs of providing 0+ services and higher rates for those services to be charged by all OSPs. It would be ironic and, indeed, unfortunate, for a consequence of billed party preference -- an idea born in response to purportedly high rates charged by several very small OSPs with minimal market share among them -- to be the resulting imposition of considerably higher 0+ rates that would have to be charged by all OSPs, including the dominant OSP.

Before the Commission can responsibly consider adoption of a billed party preference plan, it must obtain answers to critical questions about that plan's costs. How much will it cost? Who will bear those costs? Who will bear the risk that the ultimate costs exceed those reflected in the projections filed with the Commission in this proceeding?

In considering the costs of billed party preference, the Commission should recognize that those "costs" are not limited to the LECs' costs of billed party preference implementation or the resulting impact of those costs on the rates for 0+ services. The costs of billed party preference also include the economic waste that would be imposed upon the aggregator community and its consumers. In its Report and Order in Docket No. 91-35[7], the Commission adopted rules requiring the modification or replacement of aggregator telephone equipment in order to permit 10XXX access.[8] The basis for those rules was the Commission's determination that 10XXX is the "most efficient access method for consumers to use in reaching their preferred operator service providers."[9] As a result of these 10XXX access rules, thousands of affected entities -- hotels and motels, hospitals, colleges and universities, as well as other institutions (many of which are publicly-supported or not-for-profit) -- are being forced to expend millions of dollars to modify or, in many circumstances, entirely replace, otherwise serviceable telephone equipment long before the end of that equipment's useful life solely to comply with rules whose purpose would be obviated by billed party preference. Many aggregators already have begun to make the requisite modifications and replacements.

Under billed party preference, consumers would no longer need to use 10XXX or any other access codes to reach their purportedly preferred OSP. Thus, contrary to the Commission's conclusion in Docket No. 91-35, 10XXX would no longer be the most efficient way for consumers to reach the OSP of their choice.

7/ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation (Report and Order and Further Notice of Proposed Rulemaking), 6 FCC Rcd 4736 (1991).

8/ 47 C.F.R. § 64.704(b).

9/ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, supra, 6 FCC Rcd at ¶ 6.

Until all of these questions can be answered based upon hard and verifiable data, the Commission will be unable to measure the benefits of billed party preference against the costs that such a system will impose on LECs, OSPs, aggregators and, most importantly, on consumers.

III. BILLED PARTY PREFERENCE IS BASED UPON A FALSE PREMISE THAT CONSUMERS WILL CHOOSE THE SAME CARRIER FOR 0+ AND 1+ CALLING

Underlying the Commission's billed party preference proposal is the assumption that consumers will select their presubscribed IXC as their "preferred" 0+ carrier. That assumption will, in many cases, be incorrect. It is possible that some consumers will choose to use the same carrier for both. However, there is no basis to conclude that all, or even most, consumers will do so. 0+ and 1+ services are different services. They are priced differently; they are marketed differently; they have different features; different carriers specialize in each.

More importantly, consumers often use different considerations in selecting their presubscribed carrier than they do in choosing their preferred OSP. It is no more logical to presume that telephone consumers will select the same carrier for their 1+ and their 0+ calling services than it is to presume that travelling consumers will desire to rent the same brand of automobiles that they own and drive when at home.

In the Notice, the Commission states that consumers might not have to select the same carrier as their presubscribed 1+ carrier and as their preferred OSP. Specifically, it suggests that consumers could select different carriers to carry their 1+ and their 0+ traffic.[10/] While this suggestion may have a simplistic appeal, it simply is not supported by the history of equal access implementation. What the Commission is proposing is a system of dual presubscription or a "dual PIC." On several previous occasions, dual PIC proposals have been made. However, in each situation, the response of the LEC industry -- which would have to implement such a proposal if adopted -- has been that it either cannot be done or that its costs would be prohibitive.

One such aborted dual PIC proposal involved intraLATA presubscription. During the Feature Group D conversion process, numerous interexchange carriers advocated that consumers be allowed to select a primary interexchange carrier for their intraLATA calling as well as their interLATA calling -- at least in states where intraLATA competition is permitted. The response of the BOCs and other LECs in opposition to such proposals was that the costs of a system of dual PICs would be prohibitive. As a result, a dual PIC option for interLATA and intraLATA calling never has been implemented anywhere.

A more recent example of dual PIC proposals occurred in late 1990 when the BOCs filed with the MFJ court their equal access plans for coin sent-paid traffic from public telephones. Since most OSPs were unable to handle coin calling from BOC pay telephones, it was suggested that premises owners be permitted to

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10/ Notice, supra, at ¶ 23. See also Notice, supra, n. 13.

select two PICs for the BOC pay phones on their premises -- one for 0+ traffic and one for coin sent-paid traffic. Again, the BOC response was that a system of dual PICs would be unduly expensive to implement and such a plan never has been implemented. In light of this historic opposition to dual PIC implementation -- largely on economic feasibility grounds -- PhoneTel doubts whether the Commission's latest dual PIC proposal is realistic.

In addition to suggesting the impractical possibility of a dual PIC system for 0+ and 1+ calls, the Commission suggests a system whereby there would be two designations for 0+ interLATA calling -- a "primary" OSP, selected by the consumer, and a "secondary" OSP selected by the primary OSP "on behalf of their customer" to provide service where the primary OSP lacked originating capability.[11/] This proposal not only is unrealistic but it is fundamentally inconsistent with the Commission's theory underlying its tentative support for billed party preference.

As noted above, a primary consideration of the Commission in proposing billed party preference is that 0+ calls should be sent to the OSP chosen by the party paying for the call, not by someone else (i.e., the premises owner or aggregator) which may choose an OSP based on commissions.[12/] Having stated that premise, the Commission now proposes that someone other than the party paying for the call select the

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11/ *Id*., at ¶ 23.

12/ *Id*., at ¶¶9, 13.

secondary OSP. Under such a system, it is possible, perhaps likely, that primary OSPs will choose secondary OSPs based, at least in part, on compensation received from the secondary OSP. That compensation might take the form of direct commissions or other benefits (e.g., discounts on transmission capacity). In either event, secondary OSP selections in a billed party preference environment would be based on compensation paid to the entity selecting the OSP, rather than the choice of the billed party.

IV. BILLED PARTY PREFERENCE WILL CAUSE CONSUMER INCONVENIENCE, DELAY SERVICE AND INCREASE THE OPPORTUNITY FOR TOLL FRAUD

Notwithstanding the Commission's assertion that billed party preference could make operator services more "user friendly,"[13] its implementation would cause customer inconvenience. First, as the Commission notes, the necessity to communicate billing information to two (or more) operator service systems inevitably would delay call completion. It is possible that ubiquitous implementation of Signalling System No. 7, if and when that occurs, could reduce the resulting delay. However, it is uncertain when there will be widespread SS7 implementation and it is uncertain how much delay will result in the interim.

In this regard, the Commission's and the industry's analogous experience with 800 service data base access is instructive. In 1986, the Commission commenced a proceeding wherein it proposed replacement of the currently-used NNX plan

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13/ Id., at ¶ 16.

for 800 Service access with a data base system.[14/] It was anticipated that 800 service data base access would eliminate a major impediment to 800 service competition -- 800 service number portability -- and would thereby promote opportunities for competition among 800 service providers. Although six years have passed since that proceeding was begun, data base access has not yet been implemented and the lack of number portability continues to retard 800 service competition. A primary cause of this delay has been the LEC industry's inability to implement data base access with an acceptable level of post-dial delay.

Recently, the Commission directed the LECs to implement 800 service data base access and to do so within acceptable delay tolerances by 1995.[15/] Following release of that memorandum opinion and order, several LECs have requested waiver of the requirements and have indicated that they will be unable to comply with the Commission's delay standards within the timeframe adopted.[16/] As a result, 800 data base access with acceptable delay tolerances is not likely to become available for more than a decade following its proposal. Billed party preference, like 800 data base access, will involve routing of calls through the LEC networks to switches containing the information data bases

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14/ Provision of Access for 800 Service (Notice of Proposed Rulemaking) (Docket No. 86-10), 102 FCC2d 1387 (1986).

15/ Provision of Access for 800 Service (Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking), FCC 91-249, released September 4, 1991.

16/ Those waiver requests remain pending at this time.

for data "look ups" before the calls are delivered to the interexchange carrier for completion. As with 800 data base, it seems likely that there will exist post-dial delay problems with billed party preference for many years.

Perhaps more important than the inconvenience associated with delay, billed party preference may significantly increase the potential for toll fraud. Toll fraud issues are not new to the Commission. Fraud has been the subject of petitions[17/] as well as formal complaints[18/], and has been extensively addressed in comments filed in Docket No. 91-35. There are many causes of toll fraud, including that fraud which occurs in connection with the use of public telephones. A common cause of fraud from public phones is the "theft" of billing information. Every time that a billing number (e.g., a calling card number or a billed telephone number) is communicated to an operator system, there is an opportunity for that number to be learned by a perpetrator of fraud. This is so whether the number is communicated orally or automatically.

Therefore, any system which requires billing information to be communicated by the caller twice increases the opportunity for a person to obtain that number and use it for fraudulent purposes. A billed party preference system which

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17/ See, Petition of Pacific Mutual Insurance Company for a Declaratory Ruling, filed January 30, 1991.

18/ See, e.g., United Artists Payphone Corporation v. New York Telephone Company, File No. E-90-181, filed May 14, 1990.

requires callers to provide billing number information more than once, however that information is communicated, increases the possibility for fraud, irrespective of other safeguards.

V. IN ADDITION TO BEING COSTLY AND INCONVENIENT, BILLED PARTY PREFERENCE IS UNNECESSARY IN LIGHT OF PASSAGE OF TOCSIA AND IMPLEMENTATION OF THE COMMISSION'S OPERATOR SERVICE RULES

As discussed above, implementation of a billed party preference system will be an expensive undertaking. If such a system were necessary to alleviate consumer concerns, ensure that service is available or to curb abuses, the system would be worthy of consideration notwithstanding its costs. However, billed party preference is not necessary to achieve any of those ends.

At the time of the MFJ court's 1988 opinion[19/] and Bell Atlantic's initial billed party preference petition[20/], there were indeed problems in the manner in which competitive operator services were being provided. In addition to rates that were perceived to be too high (i.e., rates higher than those of the dominant carrier), consumers were often prevented from reaching their preferred OSP and often did not even know the identity of the OSP transporting their call until they received a bill. In such an environment, it is understandable why there would be support for a billed party preference system -- even without knowing the costs of such a system.

19/ See n.3, supra.

20/ See n.4, supra.

The circumstances in which operator services are provided have changed dramatically since 1988-1989. Passage of TOCSIA and promulgation of the Commission's operator services rules ensures that consumers are able to reach their preferred carrier from any telephone, irrespective which OSP is the presubscribed carrier. Moreover, the identity of the OSP must be indicated to the caller not less than three times (i.e., double branding plus mandatory signage at or near the phone) before any 0+ call is completed and any charge is incurred. In addition, rate information must be readily available. Finally, the Commission has been empowered by Congress with the authority to review OSP rates and to require OSPs to demonstrate that their rates are just and reasonable.[21/] Already, the Commission has initiated investigations of several OSPs' rates. An impact of these activities has been a voluntary lowering of most of those OSPs' rates.

In short, without implementation of a costly and cumbersome billed party preference system, consumers today can easily reach their preferred carrier, they are informed of who will carry their call prior to completion of the call if they choose not to exercise that choice, they have access to rate information and there has been downward pressure in OSP rates. In light of the changes in the provision of operator services which have been brought about, in part, by TOCSIA and the Commission's rules and enforcement activities, billed party

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21/ 47 C.F.R. §226(h)(2).

preference is unnecessary to achieve the objectives sought by its proponents in 1988 and 1989.[22/]

VI. BILLED PARTY PREFERENCE CANNOT BE IMPLEMENTED UNIVERSALLY. ANY ATTEMPT TO IMPLEMENT IT SPORADICALLY WILL INCREASE CONSUMER CONFUSION

Even if billed party preference was needed to eliminate improper practices, high rates and consumer abuses -- which it is not, and even if the costs of such a system were modest -- which they are not, there is yet another reason why such a system would disserve the public interest. Billed party preference could not at this time or at any time in the foreseeable future be implemented on a universal basis throughout the United States.

Billed party preference would be an equal access service.[23/] The BOCs and the GTE Telephone Operating companies are subject to equal access requirements pursuant to their respective consent decrees.[24/] The other nearly 1,400 of the nation's "independent" LECs are not subject to comparable equal access obligations. Under the Commission's equal access requirements for independent LECs, such LECs are only required to implement

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22/ Intrastate operator services are beyond the jurisdiction of the Commission. However, a majority of state commissions have adopted regulations which achieve at the intrastate level what TOCSIA and the Commission have achieved at the interstate level.

23/ Significantly, the MFJ court discussed billed party preference in its opinion mandating public telephone premises owner presubscription. In that opinion, the court was addressing how to apply the MFJ's equal access requirements to public telephones.

24/ United States v. Western Electric Co., Inc., et al, 552 F. Supp. 131 (D.D.C. 1982), aff'd. sub nom., Maryland v. United States, 460 U.S. 1001 (1983); United States v. GTE Corporation, 603 F. Supp. 730 (D.D.C. 1984).

equal access after they have replaced their existing switches with stored program control switches and then only within three years of receiving a request.[25] As a result, many LECs have not yet implemented equal access and will not do so for many years. Since those LECs have no obligations to implement equal access, there does not seem to be any way to obligate them to participate in billed party preference which is an equal access-based concept.

There is another reason why billed party preference could not be implemented on a universal basis. For it to be universal, it must encompass all billing arrangements. If the concept underlying billed party preference is that the call gets sent to the OSP preferred by the call payer, such a system must be able to identify the payer using any available billing instrument. Today, many calls are charged to commercial credit cards. Those cards, unlike LEC calling cards, are issued by commercial entities (banks, financial services companies, etc.). There does not appear to be any means by which a LEC could identify a credit card holder's preferred OSP based upon its VISA, American Express, Discover, MasterCard or other commercial credit card number.

Similarly, billed party preference would not work with calling cards or billed telephone numbers issued by LECs outside the Commission's jurisdiction, e.g., foreign telephone company

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25/ See, MTS and WATS Market Structure (Phase III), 100 FCC2d 861 (1985).

calling cards or telephone numbers. Under a billed party preference system, a caller in the United States seeking to charge a call to a Bell Canada calling card, for example, would still have to select an OSP either by dialing an access code for a carrier which accepts its card or by utilizing the services of a presubscribed carrier serving the originating telephone. There would be no way that a LEC would be able to identify that foreign caller's preferred OSP if the caller had a preferred OSP in the United States. This would also be the case if a caller attempted to charge a 0+ call to a foreign telephone number.

At most, a billed party preference system would enable calls to be routed to the payer's "preferred" OSP only some of the time. Billed party preference cannot be more than a partial solution to whatever problem it is intended to address. Its inconsistent implementation and availability would create additional inconvenience and consumer confusion and would further militate against its adoption by the Commission.

VII. BILLED PARTY PREFERENCE WILL IMPEDE THE DEVELOPMENT OF A COMPETITIVE INTEREXCHANGE OPERATOR SERVICES MARKETPLACE

During the past two decades, the Commission consistently has supported development of a competitive market structure for telecommunications services and products. In no market segment has the results of that pro-competitive policy been more pronounced than in the interexchange services marketplace. Notwithstanding AT&T's continued dominance of that market, today, there are literally hundreds of service providers, many of whom have chosen to serve geographic or product "niche" markets.

The operator services market is such a niche market. The growth of the competitive operator services industry following the market opportunities created by the MFJ court's premises owner presubscription decision in 1988 has enabled smaller firms to enter the marketplace and to bring to the market service innovations and choices not previously available. PhoneTel does not dispute that there have existed certain improper consumer information and charging practices during the early years of operator services competition. However, those problems have been addressed and largely resolved through a combination of legislation, remedial regulations and, most importantly, through voluntary industry compliance programs generated in large part by public pressure.

Stated simply, the system has worked. Legitimate consumer complaints about the performance of portions of the 0+ industry led to government regulation and to an industry shakeout of the irresponsible actors. Implementation of a billed party preference system would not solve any problems that have not already been addressed and corrected. There is no reason to believe that billed party preference -- despite its significant costs (see Section II of these comments) -- would produce lower rates, better customer information or increased consumer choice.

Billed party preference, as proposed by the Commission, would, however, turn the competitive operator service industry